



STATE OF DELAWARE  
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**MEMORANDUM**

DATE: December 16, 2009

TO: Ms. Barbara Brown, Executive Director  
Victims' Compensation Assistance Program

FROM: Daniese McMullin-Powell, <sup>pmf/kit</sup>Chairperson  
State Council for Persons with Disabilities

RE: Victims' Compensation Assistance Program Mental Health Treatment Form

The State Council for Persons with Disabilities (SCPD) has reviewed the Victims' Compensation Assistance Program (VCAP) mental health treatment form. Council has the following observations.

First, the VCAP is specifically authorized by the new statute "to provide indemnification claim forms for purposes of this chapter and to specify the information to be included in such forms". Title 11 Del.C. §9006(f). Therefore, the VCAP enjoys some latitude in development and content of its claim forms.

Second, the principal concern with the mental health treatment form is that it arbitrarily imposes requirements on victims seeking mental health treatment which are not imposed on victims seeking physical health treatment. Victims seeking compensation for anything other than mental health treatment can simply submit provider invoices post-treatment for reimbursement. See general claim form, Section 5, directing applicant to "(l)ist all Medical/Dental Providers, and/or those who have provided services to the victim and attach any medical bills that you have received". In contrast, the mental health treatment form contemplates pre-approval of mental health treatment (Section 2); requires a mental health treatment plan specifying duration, frequency of sessions, and type of sessions (individual vs. family/group (Sections 2 and 3); and requires a narrative description of the crime. The VCAP is subject to Title II of the ADA and Section 504 of the Rehabilitation Act which have been interpreted as limiting arbitrary distinctions based on classes or level of disability. Clark v. Cohen, 613 F. Supp. 684, 692n.6 (E.D. Pa. 1985), aff'd 794 F.2d 791 (3d Cir.), cert denied, 107 S.Ct. 459 (1986); Wagner by Wagner v. Fair Acres Geriatric Center, 49 F.3d 1002, 1016n.15 (3d Cir. 1995); Easley by Easley v. Snider, 841 F. Supp. 668 (E.D. Pa. 1993). Cf. City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3258-3259 (1985) [denial of equal protection to require permit for group home for persons with mental retardation but not a group home for elderly and other groups]; and Frederick L. v. Thomas, 408 F. Supp. 832, 835 (E.D. Pa. 1976) [allegation that class of persons with mental retardation provided summer program denied to class of persons with learning disabilities states cause of action under equal protection].

Third, there is ostensibly no practical justification for the additional form for mental health treatment. The description of the crime is already addressed in Section 3 of the general claim form<sup>1</sup>. The advantages, if any, of requiring a pre-approved treatment plan with specific components would likewise apply to most medical disciplines, including physical, occupational, and speech therapy; dental reconstruction; chiropractic treatment; and any other medical treatment requiring multiple appointments. If the VCAP has any concerns about a claim, it is authorized to require the victim to submit to an independent examination: “The Agency may require any injured person filing a claim pursuant to this chapter to submit to a physical or mental examination by a physician or physicians selected by the Agency.” Title 11 Del.C. §9011(c).

Fourth, the reference to “M.D.” on the mental health treatment form suggests that it applies to psychiatrists. In contrast, the statute appears to differentiate psychiatric treatment from psychological/counseling services. Compare Title 11 Del.C. §§9002(h)(1), 9009(k), and 9024. Therefore, if the VCAP wishes to retain a supplemental mental health treatment form, it may wish to exempt psychiatric treatment.

Fifth, the VCAP enabling statute does not contemplate greater scrutiny of mental health claims versus physical health claims. Consider the following:

A. Even counseling or “religious methods of healing” by unlicensed clergy is compensable [Title 11 Del.C. §9002(1)].

B. Unlike many compensable losses (e.g. housing; moving expenses; personal safety property), there is no separate cap on mental health services [Title 11 Del.C. §9002(1)].

C. The only explicit waiver of the 2 year statute of limitations to reopen an Agency decision is in the context of mental health counseling for child sex abuse victims [Title 11 Del.C. §9009(k)].

D. The only context in which compensation is explicitly authorized without an application is mental health assessment and short-term counseling of children [Title 11 Del.C. §9024(d)].

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

Vcap mh form 12-16-09

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<sup>1</sup>The general claim form is, however, ostensibly deficient since it does not include a description of “the names of all persons involved”, the “time” of the injury apart from the date; and “circumstances which brought about the injury”. See Title 11 Del.C. §9012(a).